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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09/743,233	01/08/2001	Herbert Eichenauer	MO-6093 LEA	7911

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BAYER CORPORATION
PATENT DEPARTMENT
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[REDACTED] EXAMINER

MULLIS, JEFFREY C

[REDACTED] ARI UNH [REDACTED] PAPER NUMBER

1711

DATE MAILED: 10/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 17 June 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2-12 and 14-16 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 2-12 and 14-16 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1) Certified copies of the priority documents have been received.
 2) Certified copies of the priority documents have been received in Application No. _____.
 3) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTC-1449) Paper No(s) _____

4) Interview Summary (PTC-413) Paper No(s) _____
 5) Notice of Informal Patent Application (PTC-152)
 6) Other _____

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All remaining rejections and/or objections follow.

Claims 2-12 and 14-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The term "type" renders the claims unclear since it is subjective as to when a feature is of the type of another.

Claim 11 is unclear since the persulfate compound is not required to be added at all at once, therefore time of addition is not fixed but rather time of the persulfate compound addition could mean the beginning of the persulfate addition or the end of the persulfate addition.

Claim 5 is objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicants are required to cancel the claims or amend the claim to place the claim in proper dependent form or rewrite the claim in independent form.

Claim 5 does not further limit claim 16 from which it depends since claim 16 already requires the presence of styrene and acrylonitrile.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mitsubishi Monsanto (JP 06-10230).

See the previous Office action at the paragraph bridging pages 3 and 4 et seq.

Applicants' arguments filed 6-17-02 have been fully considered but they are not deemed to be persuasive.

Applicants argue that the term "type" is clearly defined in the application at page 1 lines 9 et seq. However there is nothing in the specification which can clearly be said to be a definition indicating which materials are clearly of the ABS type which are not.

With regard to the phrase "the term of the persulfate compound addition", applicants are correct that this phrase does not appear in the claims. Nonetheless, applicants' claim 11 in Part iii does contain a limitation wherein a persulfate compound is added apparently from the time of the persulfate compound addition despite the fact that the time of the persulfate compound addition is not fixed and it is not clear if the beginning or end of persulfate addition is intended.

Applicants argue that the recited styrene and acrylonitrile in claim 5 limit the resin forming vinyl monomers of the graft copolymer A of claim 1. Presumably applicants are referring to

claim 16 rather than claim 1 since claim 5 now depends from claim 16, but in any case it would appear to the Examiner that an ABS composition would necessarily contain acrylonitrile and styrene as part of the graft copolymer A of claim 16.

With regard to applicants' arguments pertaining to the rejection under 35 U.S.C. § 103, applicants' remarks are moot since no such rejection now remains. With regard to applicants' arguments regarding the rejection under 35 U.S.C. § 102(k), only claims 11 and 12 now stand rejected under 35 U.S.C. § 102. However with regard to these claims applicants allege that there is nothing in Mitsubishi Monsanto '230 which describes the presently claimed composition since there is no description of the sequential addition of initiator compounds as set out in applicants' remarks in the first complete paragraph on page 7 and last complete paragraph on page 6. However none of the limitations referred to appear in claim 11.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMDG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS

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ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Jeffrey Mullis at telephone number (703) 308-2820.

J. Mullis:cde

September 30, 2002

Jeffrey Mullis
J. Mullis